

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

CRL.A.No. 791 of 2004()

SC.332/2003 of SESSIONS COURT, THRISSUR

CP.37/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

APPELLANT: ACCUSED:

RAJU, S/O. SIVARAMAN, THOZHUTHUPARAMBIL
VEEDU, KOZHUKULLY VILLAGE,
NADATHARA, THRISSUR.

BY ADV. SRI.K.N.PADMAKUMAR
SRI.K.FPAPPACHAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, REP. BY CIRCLE
INSPECTOR OF POLICE, TOWN EAST POLICE STATION,
THRISSUR, THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI K.C. SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 26/2/2007 , THE COURT ON 26/02/2007 DELIVERED THE
FOLLOWING:

J.B. Koshy & T.R. Ramachandran Nair, JJ.

Crl. Appeal NO.791 of 2004

Dated this the 26th day of February, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

The sole accused in S.C. No.332/2003 on the file of the Sessions Court, Thrissur is the appellant herein. The offence charged is under Section 302 I.P.C. and the Court below has found him guilty and convicted him and sentence of imprisonment for life has been awarded. Challenging his conviction and sentence, the appeal is filed by the appellant.

2. The date of occurrence is 13.5.2002 and the time of occurrence is at about 3.45 p.m. The deceased is one Sunil, a broker in gold. The prosecution case is that the accused had placed orders for 18 sovereigns of gold ornaments with P.W.1, a trader engaged in manufacture of gold ornaments. The deceased was the person through whom orders were placed. On the date of occurrence in the morning, the accused reached the shop of P.W.1 at M.O. Road, Thrissur and paid Rs.1000/- as advance further informing that he would be reaching there in the afternoon. At about 1.30 - 2 p.m. he reached the shop and verified the gold ornaments and he told P.W.1 that his sister for whom the ornaments have been ordered, would

reach soon. P.W.1 sent words to the deceased through his father and the deceased reached there. At about 3 p.m. the deceased along with the accused, had gone out for taking tea and thereafter they came back telling that the sister of the accused had been informed by telephone and she would reach soon there. They remained in the shop room chatting with each other. While so, P.W.1 went out of the room for urination. According to the prosecution story, while P.W.1 was standing on the foot path, the deceased came out through the ladder leading to the shop with bleeding injuries and fell down. He attempted to cross the road as his father was there on the opposite side. But again he fell down and seeing this, his father ran towards him. The accused was found coming out of the room through the ladder and he fled towards south and he was chased by the father of the victim. The father returned immediately and the deceased was taken to the hospital and within minutes on reaching the hospital, the deceased succumbed to the injuries.

3. P.W.1 gave the First Information Statement at about 5.40 p.m. in the Town East Police Station, Thrissur, based on which Crime No.204/2002 was registered and the F.I.R. was forwarded to the Magistrate. On the next day at 11.30 a.m. the Circle Inspector of Police prepared Ext.P6 scene mahazar and took M.Os.1 to 3 and M.O.9 into custody and the accused was

arrested on 21.5.2002. M.O.4 shirt which is alleged to be wore by the accused at the time of occurrence, was got recovered through him.

4. The prosecution examined P.Ws.1 to 8 and marked in evidence Exts.P1 to P10 and M.Os.1 to 9. When Sunil was brought to Medical College Hospital, he was attended by P.W.8 doctor at 4.10 p.m. Case sheet was marked as Ext.P10.

The following injuries were noted by the doctor, P.W.8.

- “1. Penetrating injury right side of abdomen with protruding intestine.
2. Stab injury 2 x 1 cm left side of chest approximately 5 cm inside left nipple.
3. Stab injury 2 x 1 cm over the right chest 3 cm inside the right nipple.”

According to P.W.8, doctor, injuries were serious and sufficient to cause death in the ordinary course of nature. Patient was declared died at 4.20 p.m. The ante-mortem injuries noted at the time of autopsy as contained in Ext.P3 postmortem report prepared by P.W.8 doctor is described below:

- “1. Incised wound skin deep 3 x 0.5 cm on the right side of forehead with its inner end in midline and 4 cm above right eyebrow.
2. Incised penetrating wound 2.5 x 0.5 cm x 6.5 cm vertically placed on the front of right side of chest with its upper end 7 cm outer to

midline and 3.5 cm inner to right nipple. The wound had cut the muscles of the anterior chest wall and entered the chest cavity by cutting the intercostal muscles and vessels between the 3rd and 4th ribs (2.5 x 0.4 cm). The wound had cut the pericardium 2.5 x 0.3 cm and entered the right ventricle by cutting the anterior wall of right ventricle 2.5 x 0.3 cm. There was 800 ml of fluid blood and 600 gram of clotted blood in the right chest cavity. The right lung was collapsed. The wound was directed backwards, downwards and medially. Both ends of the wound were sharply cut.

3. Incised penetrating wound 2.5 x 0.7 cm obliquely placed on the front of left side of chest with its outer end 6 cm inner to left nipple and 3.5 cm outer to midline. The wound had cut the muscles of the anterior chest wall and entered the chest cavity by cutting the 4th costal cartilage (3.2 x 0.5 cm). The wound had cut the pericardium 2.5 x 0.4 cm and entered the left ventricle by cutting the anterior wall of left ventricle (2.6 x 0.3 cm). The left chest cavity contained 500 ml of fluid and 400 gm of clotted blood. The left lung was collapsed. Both ends of the wound were sharply cut. The wound had a total minimum depth of 8.5 cm.

4. Incised penetrating wound 3.5 x 1 cm on the front of right side of abdomen vertically placed with its lower end 7.5 cm outer to umbilicus and 18 cm above iliac crest. It had entered the abdominal cavity by cutting the muscles of the anterior abdominal wall. Both ends of the wound were sharply cut. The wound was directed backwards, downwards and medially. The wound had a total minimum depth of 7.2 cm.

5. Abrasion 3.5 x 2 cm on the back of left elbow.

6. Abrasion 4 x 3 cm on the back of left forearm 7 cm below elbow.

7. Linear abrasion 1.5 x 0.2 cm on the front of left side of chest below collar bone 20 cm outer to midline. All the injuries were fresh injuries.”

The cause of death was on account of incised penetrating injuries sustained

on the chest and abdomen, viz. injuries 2 to 4 in Ext.P3. Injury Nos.2 and 3 have been caused on the right and left side of the chest and injury No.4 is on the abdomen which are capable of causing death in the ordinary course of nature with a weapon like M.O.1.

5. Counsel for the appellant argued that this is a case rested solely on circumstantial evidence and the motive for the alleged incident has not been proved by the prosecution and hence the conviction and sentence awarded by the Court below based on such evidence cannot be sustained. It was also argued that the dying declaration relied upon by the Court below and made by the deceased to P.Ws.1 and 2 cannot also be accepted.

6. The learned Sessions Judge mainly relied upon the evidence of P.Ws.1 to 3 and the dying declaration given by the deceased to P.Ws.1 and 2 as well as the circumstances established in the evidence to find the appellant guilty. P.W.1 is having a shop in M.O. Road, Thrissur. According to P.w.1, the accused was known to him through the deceased, who was a broker in gold. In his deposition, he stated that at about 10-10.15 a.m. on 13.5.2002, the accused came to the shop of P.W.1 and gave an amount of Rs.1000/- as advance after telling that he will reach at noon. He came back at about 1.30 - 2 p.m. and wanted to see the gold ornaments made for him, which was obliged by P.W.1 and after showing it to him, they were kept

back by P.W.1. The accused informed P.W.1 that his sister will come immediately and the bill may be kept prepared. The shop of P.W.1 is on the upstairs. P.W.1 informed the father of the deceased, who like him, is a gold broker in front of Vrindavan Jewellery, opposite to the shop of P.W.1 to summon the deceased and the deceased came there immediately after 10 minutes. According to P.W.1, he was taking his lunch inside his shop and he heard the accused telling the deceased to get a bag for taking the gold. The deceased did not leave at that time and at about 3 p.m. both of them went outside and after taking tea, came back. Accused told them that the sister has been informed and she will come immediately and thereafter they remained in the shop, chatting. P.W.1 went out of the shop for urination and was talking to one Joseph who is the owner of the shop, in the ground floor. He heard something falling down from the ladder and found the deceased lying there pressing his belly with hands and bleeding. He tried to cross the road to reach his father, but he fell down again in the road and at that time the accused came out through the ladder and ran away towards south. Seeing this, the father of the deceased chased him and he came back after about 5 minutes. The deceased was taken to the hospital by P.W.1 along with the father of the deceased in an autorickshaw. P.W.1 has specifically stated that the deceased told them while being taken in the

autorickshaw that the accused had stabbed him. The deceased succumbed to the injuries, in the hospital, which was informed by the Doctor who directed him to inform the police about it. Accordingly, P.W.1 reached the police station and gave the First Information Statement. He went to the police station after closing the shop. He identified M.O.1 as the bloodstained knife recovered by the police from the shop. He has clearly deposed that the deceased and the accused alone were in the shop after he came down. There are two other shops, but the ladder is a common one opening to the front and there is no way to the back side. In his cross examination, P.W.1 also stated that the hospital was only at a distance of 3 minutes travel and by the time they reached there, Sunil had not died. He was immediately taken inside and within about 15 minutes he died. It is also pertinent to note that there is no challenge in the cross examination disputing the presence of the accused at the time of occurrence and about the details of the incident occurred. Going by the deposition of P.W.1, the ladder starts from the foot path itself towards the up stair and there were two other rooms on either side of his shop room. It was also further stated in cross examination that the deceased had told him in the autorickshaw that ”

“(Raju stabbed me).

7. P.W.2 is the father of the deceased and his evidence corroborates

the evidence of P.W.1. The accused was also known to him about 6 months prior to the incident. According to him, the accused came to him initially for arranging ornaments for the marriage of his sister and as he was not doing well, he arranged his son to do it. On the fateful day, at about noon, P.W.1 informed him that the accused had arrived for taking the ornaments and accordingly he went to the High Road for summoning his son, the deceased, and sent him to the shop of P.W.1. Thereafter, the deceased and accused left for taking tea and they returned thereafter to the shop of P.W.1. According to P.W.2, at about 3.30 p.m., hearing his son crying and he crossed over the road to the other side and then the deceased fell down before him. He asked him what had happened and was told “ “ (that Raju stabbed him). Seeing Raju running towards south, he ran after him and immediately came back to his son and took him in an autorickshaw to the hospital along with another person. He deposed further that the deceased while being taken, again told them” “

“(Raju stabbed me, father) and he also sought water to drink. After reaching the hospital, some moments later, he was told that his son died. In his cross examination also, nothing could be brought out to discredit his version. He further explained that, the deceased had voluntarily disclosed that accused stabbed him which was heard by the other person also (P.W.1).

8. The prosecution examined P.W.3 who is conducting a watch repair shop in the up stair of the building. He also deposed that he saw a person going down through the ladder from the room of P.W.1 with bleeding injuries and crying and another person also running through the ladder behind him, and running away. He was clear in that he saw the person clearly while going down and identified him as the accused. The evidence of P.W.3 will show that at the time when the incident occurred, the accused was there in the room and he immediately fled from the scene. The accused and deceased were last seen together as is clear from the above evidence also.

9. The prosecution also relied upon the dying declaration made by the deceased to P.Ws.1 and 2. In the evidence of P.W.1 and P.w.2 they have deposed the words spoken to by the deceased when he fell down from the ladder and during the time he was being taken to the hospital. In the First Information Statement also, this fact is stated by P.W.1. The deceased had told P.W.1 that he was stabbed by the accused. We find that First Information Statement is lodged without any delay and the same was produced before the Court with promptness. Therein also these facts about the dying declaration have been stated by P.W.1 Regarding the dying declaration given to P.W.2 also, it is clear from the evidence that the

deceased had disclosed about the complicity of the accused in inflicting injury on him, to his father. His father evidently was stunned by the scene of his son falling down with injuries and even though he immediately tried to chase the accused, he came back to remove his son to the hospital. As far as this part of the evidence is concerned, we find that the witnesses have given cogent and convincing evidence and the same is natural also. Hence, the statement will come under Section 32(1) of the Evidence Act.

10. The evidence of P.W.8, the doctor will show that the deceased succumbed to the injuries after reaching the hospital. At the time of examination regarding the conditions of the deceased, it is recorded that “on examination patient is gasping. Occasional respiration.” He was declared dead at 4.20 p.m. P.W.5 who conducted autopsy had spoken about the conditions of the deceased and gave his opinion that he was not incapable of making statement as there was no injury to the brain. It is evident and clear from the evidence available in the case that it is a clear case where the guilt of the accused has been proved to the hilt and the chain of circumstances cannot be said to be a broken one. The medical evidence also will show that it was not a case of instantaneous death and hence the deceased was capable of speaking while he was being taken to the hospital. Therefore, we hold that the statements made by the deceased to P.Ws.1 and 2 are

voluntarily made and will come under Section 32 of the Evidence Act. We find that the oral dying declaration given by the deceased is true and voluntary and is clearly supported by the medical evidence also. This is a strong evidence against the guilt of the accused and it corroborates the evidence of P.Ws.1 and 3.

11. The circumstances proved in the case shows that the accused was seen last in the company of the deceased. This is clear from the evidence of P.W.1 and P.W.3. The evidence shows that the interval between the death and the deceased last seen with the accused is short and therefore a presumption as the person being the author of the death can be drawn against the accused. In this context, we refer to the Apex Court decision in **State of U.P. v. Sathish** (2005 AIR SCW 905). At paragraph 23 of the judgment, it is held as follows:

“23. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.”

A Division Bench of this Court in the decision reported in **Rajan v. State**

of Kerala (2002 (2) KLT S.N. Page 88.) in a similar context, held as follows:

“ Theory of last seen together is one where two persons are seen together alive and after an interval of time, one of them is found alive and the other dead. If the period between the two is short, presumption as to the person alive being the author of death of the other can be drawn. Time gap should be such as to rule out possibility of somebody else committing the crime. The theory can be pressed into service effectively when the two persons last seen together were close friends or persons who are likely to be seen together giving due margin for the time gap.”

Going by the evidence of P.W.1, there is no possibility of somebody else committing the crime, as the only way to the up stair was the ladder and there is no case for the accused also that somebody else might have intervened between the deceased and the accused, and no suggestions have been made to P.Ws.1 and 3 in the cross examination also in that regard. It is also clear that the accused was moving closely with the deceased in respect of the transaction of the gold ornaments and therefore they were having close liaison for the finalisation of the transaction as is clear from the evidence of P.W.1. All the circumstances proved shows that the same are

conclusive and it excludes every other possibility except the accused being guilty of the charged offence. Further, there is no suggestion emanating from the accused as to whether they had parted company from the room at any time. In these circumstances, we find that the theory of last seen together also is attracted and hence the accused is clearly guilty and his conduct of running towards south after coming down from the ladder is one falling under Section 8 of the Evidence Act.

12. We find that the argument of the counsel for the appellant that in the absence of any strong motive proved by the prosecution the entire case is unbelievable and hence the accused is entitled to the benefit of doubt, is only to be rejected. This is a case where there is cogent and convincing evidence regarding the occurrence through competent witnesses in which the deceased died at the hands of the accused. Therefore, absence of proof of motive is not fatal to the prosecution. Reliance placed by the learned Sessions Judge on the decision of the Honourable Supreme Court reported in **Om Prakash Raja v. State of Uttaranchal** (2003 S.C.C. CrI. 412) to reject the argument is therefore justified. It is true that when proof of murder case rest on circumstantial evidence, motive plays an important role as held by the Apex Court in **Mulakh Raj v. Sathish Kumar** (1992

Crl.L.J. 1529 SC). But even in such cases Proof of motive is never indispensable for conviction, if there are other clear circumstances to prove the guilt beyond reasonable doubt. Hence, the failure to discover a motive by the prosecution, will not break the chain of circumstances in view of other firmly established circumstances. It was also argued that going by the sequence of events, it will be seen that accused and the deceased were only friends and this fact will also disprove the prosecution case. We cannot rule out circumstances when a friend turning foe and this case amply proves the said fact also. Therefore, the said argument is only too feeble in the light of the strong evidence adduced by the prosecution in the case. The victim suffered injuries on the vital parts of his body and they were deep injuries also. Multiple injuries were inflicted on him by the appellant. Therefore, the guilt of the appellant for offence punishable under Section 302 I.P.C. is proved.

The conviction and sentence awarded by the Court below is therefore confirmed and the appeal is dismissed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)